

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KASSIE LINDHOLM, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WILLIAM Q. LINDHOLM,

Respondent-Appellant.

UNPUBLISHED

April 29, 2010

No. 294405

Dickinson Circuit Court

Family Division

LC No. 08-000511-NA

Before: OWENS, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

Respondent appeals as of right from the lower court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, respondent only challenges the lower court's determination regarding the minor child's best interests. MCL 712A.19b(5). We find that the lower court did not clearly err in finding that termination of respondent's parental rights was in the minor child's best interests. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent first cites his fundamental liberty interest in the care, custody, and control of his child under the United States Constitution, as well as Michigan's policy of returning children to their natural parents when possible. However, respondent admits that petitioner proved a statutory basis for termination by clear and convincing evidence. "Once the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under subsection 19b(3), the liberty interest of the parent no longer includes the right to custody and control of the children." *Id.* at 355. Once a statutory ground for termination has been established, the state's interest in protecting the child trumps any constitutional interest that a respondent parent has. *Id.* at 356. Accordingly, the state's public policy of keeping children with their natural parents no longer applied to respondent and his daughter.

Respondent also argues that the trial court erred in relying on the same evidence that established the statutory bases for termination to conclude that termination was in the child's best interests. Respondent reasons that the result of a judge considering the same evidence in both

inquiries would necessarily be that “in any case where evidence exists to support termination under MCL 712A.19b(3), there must also, by definition, be evidence that it is in the minor’s best interests to proceed with termination.” Respondent is correct that evidence that has established a statutory ground for termination would almost certainly be evidence that would also weigh in favor of a finding that termination is in the child’s best interests. However, this does not render the requirement for a best-interest determination “mere surplusage,” as respondent argues. Although the evidence used to determine that there was a statutory basis for termination would likely weigh in favor of a finding that termination is in the child’s best interests, it would not necessarily be *enough* evidence for a court to conclude that termination of parental rights would be in the child’s best interests. The remaining evidence on the record could include both (1) evidence that does *not* support a statutory basis for termination, and (2) evidence that supports a finding that the child’s best interests would be served instead by reunification with the parent. In short, the evidence favoring reunification *could* outweigh evidence establishing a statutory ground for termination. Because this possibility exists, the best-interest language is not mere surplusage.

Moreover, the Michigan Supreme Court has held that a lower court may consider evidence on the whole record in making its best-interest determination. *In re Trejo*, 462 Mich at 353. Here, the record as a whole established that termination of respondent’s parental rights was in the minor child’s best interests. Respondent’s characterization of the lower court’s decision as containing no real analysis on the best-interest issue is simply incorrect. Respondent remained in the active grip of an opiate addiction and he refused to accept that his drug use affected his ability to effectively parent the minor child. The lower court considered the child’s need for permanency, for parents who are loving and engaged, and for physical safety, and it concluded that these needs overrode her need to maintain the bond she had with respondent.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O’Connell